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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/303,315	04/30/1999	EUGENE S. PEARLMAN	108604/002	8170

7590 01/09/2004

Rashida A. Karmali, PhD  
99 Wall Street  
13th floor  
New York, NY 10005

EXAMINER

CLOW, LORI A

ART UNIT	PAPER NUMBER
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1631

DATE MAILED: 01/09/2004

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APPLICATION NO./ CONTROL NO. 09/303,315	FILING DATE 30 APRIL 1999	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION PEARLMAN	ATTORNEY DOCKET NO. 104,002
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EXAMINER

CLAW

ART UNIT	PAPER
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1631

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Commissioner for Patents

#### DETAILED ACTION

##### Non-Responsive Amendment

The amendments submitted in the 4 November 2003 response are non-responsive. For compliance with 37 CFR 1.121 the current status of all of the claims in the application, including any previously cancelled or withdrawn claims, must be given. The current amendment omits the status of claim 12. The examiner recognizes that this is most likely a typographical error. However, such errors cannot be corrected by an examiner's amendment and the claims are held as non-compliant.

The amendment is also non-compliant in that no claims are directed to the elected hepatitis algorithm elected in the response to the restriction requirement on 15 December 2000. Claims 12 and 18, directed to the elected species, have been cancelled. Applicant is not permitted to change species in an RCE filing. See MPEP 819. An amendment that does not include the elected species is considered non-responsive.

##### Response to Applicants Remarks

It is noted that in Applicant's response dated 4 November 2003 there are several questions directed to matters of office policy. In attempt to clarify these matters and to facilitate prosecution, these issues are addressed herein.

Applicant states that the examiner failed to recite "that the pages and line numbers pointed to fail to provide support for the limitations made in the amendment dated May 22, 2003", in the Office Action of July 16, 2003. The examiner would like to refer applicant to the Office Action of July 16, 2003, page 2, lines 16-20, which state that the applicant is invited to point to specific page and line number for support of the amendments to the claims. Furthermore, an Advisory Action was sent on September 17, 2003 in response to Applicant's arguments of August 20, 2003. The Advisory Action again stated that Applicant still had not provided support for the amendments to the claims.

Applicant poses a question as to why the examiner placed a telephone call stating that the claims were allowable after the response dated 5 May 2003. The examiner sincerely regrets the error and apologizes for any inconvenience to the Applicant, however, after further review, the amendments to the claims were found to include new matter and as stated above, a final rejection was mailed.

Applicant also inquires as to why the examiner failed to return a phone call that was placed on Friday, July 18, 2003. The examiner, in fact, did attempt to return the call within the allotted 24-business hour period set forth as Office policy for customer service. The examiner received the phone call on Friday afternoon. Applicant placed a call to the examiner's supervisor, Dr. Michael Woodward, on the morning of Monday, July 21, 2003, before speaking with the examiner. Dr. Woodward advised applicant that he would call after review of the case, which was unavailable at the time. Due to the conversion of files from paper form to electronic form, the file continued to be unavailable to Dr. Woodward. The file became available only as of 14 November 2003. The examiner apologizes for the confusion and inconvenience to the Applicant as a result of the transfer from paper form to electronic form.

# Inquiries

Papers related to this application may be submitted to Technical Center 1600 by facsimile transmission. Papers should be faxed to Technical Center 1600 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notices published in the Official Gazette, 1096 OG 30 (November 15, 1988), 1156 OG 61 (November 16, 1993), and 1157 OG 94 (December 28, 1993) (See 37 CFR § 1.6(d)). The CM1 Fax Center number is either (703) 308-4242, or (703) 308-4028.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lori A. Clow, Ph.D., whose telephone number is (703) 306-5439. The examiner can normally be reached on Monday-Friday from 10:00 am to 6:30 pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael P. Woodward, Ph.D., can be reached on (703) 308-4028.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Legal Instrument Examiner, Tina Plunkett, whose telephone number is (703) 305-3524, or to the Technical Center receptionist whose telephone number is (703) 308-0196.

January 5, 2004  
Lori A. Clow, Ph.D.  
Art Unit 1631  
*Lori A. Clow*

MARJORIE MORAN  
PATENT EXAMINER

*Marjorie A. Moran*